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IN THE

SUPREME COURT OF THE

UNITED STATES

October Term, 1972

No. 72-[illegible]

G. Douglas & Mary Tibbits, Bankrupts,

Petitioners,

v.

James E. Cossey, Trustee, *et al Respondents*

REPLY TO BRIEF IN OPPOSITION

TO PETITION FOR WRIT OF CERTIORARI

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IN THE
SUPREME COURT OF THE
UNITED STATES

October Term, 1972

No. 72-285

G. DOUGLAS & MARY TIBBITTS, Bankrupts,

Petitioners,

V.

JAMES E. CUSSEN, Trustee, *et al Respondents*

REPLY TO BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

This Reply Brief is submitted pursuant to Rule 24(4), addressed to arguments first raised in the brief in opposition to Petition for Writ of Certiorari.

I

Respondent asserts that any lack of notice of dismissal or adjudication hearing before the Bankruptcy Referee was cured by the subsequent hearing before the United States District Court. Respondent characterizes this as a "hearing de novo *with notice to all parties*," (emphasis in Respondent's Brief). Respondent's assertion is unsound and untrue in the following particulars.

a. Notice of the hearing before the District Court was given only to Petitioners' then counsel, the Trustee, counsel for the Trustee, and Counsel for the secured party, Bank of Sacramento, now Security Pacific National Bank. This notice was sent by the Referee and it is untrue, as asserted by Respondent, that "the United States District Court issued its own notice." No notice was given unsecured creditors, who were vitally interested in the confirmation of Petitioners' plan or an adjudication or dismissal. For reasons elaborated in the Petition herein the unsecured creditors' interests and Petitioners' were closely interwoven, and it is these creditors who were entitled to, and did not receive, notice under Section 376(2) of the Bankruptcy Act. Nor did these same creditors receive notice of the hearing before the United States District Court.

b. The United States District Court did take evidence on its hearing on Writ of Review from the Referee's Order. However this was *not* a de novo hearing as asserted by Respondent. The District Court applied a very strict appellate standard of review, and made it clear that it would reverse only if the action of the Referee, the adjudication, was "simply unreasonable" or "clearly wrong."

c. The lack of notice to creditors of the hearing before the Referee was not cured by the later hearing before the District Court. The unsecured creditors did not have notice of the later hearing and even had they had notice they should have been allowed to address their arguments as to

confirmation, dismissal or adjudication to a trial court, the Referee, without having to face the uphill fight of the appellate standard maintained by the District Court.

II

The statement of Petitioners that the assets of the estate were valued between $300,000 and $600,000 is amply supported by the record. The assertions of Respondent that "no one other than the petitioners have ever placed such a value on the assets of the estate" and that "in fact all unsecured creditors fully recognized that the assets were insufficient to satisfy the claim of the single secured creditor, now Security Pacific," are simply untrue. Security Pacific National Bank's *own* appraisal of the Petitioners' real estate valued it at $199,500, less $100,000 encumbrances. The Bank has urged that Petitioners' 49% stock interest in one corporation is worth $100,000. These are the Bank's evaluations and Petitioners' valuation was three times higher. In addition to these were notes receivable, copyrights, and goodwill of the two weekly newspapers.

Dated, San Jose, California, September 29, 1972.

Respectfully submitted,

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